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On The Symbiosis of Law and Truth in Christian Theology: Reconciling Universal and Particular through the Pauline Law of Love

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Synopsis

This article argues that the secular liberal and positivist foundations of the modern Western legal system render it violent. In particular, the liberal exclusion of faith and subjectivity in favour of abstract and universal reason in conjunction with its privileging of individual autonomy at the expense of the community leads to alienation of the individual from the community. Similarly, the positivist exclusion of faith and theology from law with its enforced conformity to the posited law also results in this violence of alienation. In response, this article proposes a new foundation for law, a natural law based in the truth of Trinitarian theology articulated by John Milbank. In the Trinity, the members exist as a perfect unity in diversity, providing a model for the reconciliation of the legal individual and community: the law of love. Through the law of love as the basic norm, individuals love their neighbours as themselves, reconciling the particular and the universal, and providing a community of peace rather than violence.

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Alienation and Reconciliation: (Particular?) Law as Violence, and Pursuing (Universal?) Peace

Law, at its most basic and insofar as it can be simply defined, can be considered for the purposes of this article as a principle or set of principles which govern relationships within a community.² Within a modern Western legal system (or what could be largely considered a liberal, positivist system), law aims to achieve justice, promote freedom, uphold the rule of law and protect security.³ However, despite the aspirational language, this article argues that such a system is undesirable and problematic – ultimately, even violent.

For in this conception of the legal system, there exists a fundamental violence (of alienation) between the individual or particular, and the community or universal.⁴ At one level, there is a focus on totalisation, where a person is submitted to a general principle such as the ‘rule of law’ which forms their identity and subsumes difference. Upholding this ‘rule of law’, which claims that the law is objective, applies equally to everyone, and is the authority for and subjectivates the society, arguably leads to alienation where personal subjectivity is irrelevant.⁵ Paradoxically, this can also work at the opposite level, for in liberalism’s focus on rights and autonomy, there is often a privileging of the individual which alienates them from the good of the community. There is also a similar and related alienation and tension between the individual and the community in positivist jurisprudence, which

² As will become apparent, the advantage of a definition like this lies in its flexibility (notwithstanding the issue of ambiguity, which is bypassed here – the definition of law itself could perhaps be considered a microcosm of the universal/particular problem which this article addresses). Such could include various forms of liberalism, positivism, natural law, and even the Pauline law of love.

³ Wacks (2008), p 1.

⁴ Here violence is taken to mean rupture or split, an alienation between the individual and the community. Of course, this may manifest itself in the more traditional forms of violence, as alluded to later in the article.

⁵ Bloechl (2013).

alienates the individual through enforcing conformity and obedience to privilege and protect the community. This article argues that the violence of alienation results from the secular nature of liberalism and positivism, which rejects the subjective nature of faith in favour of a universal, totalising reason which is indifferent to the individual.

However, through the return of a theological natural law, or the paradigm of the law of loving your neighbour as yourself which is the unity and diversity in the community of the Trinity, a model is provided from Christian theology which reconciles faith and reason and allows a harmonious relationship between the individual and the society. This avoids totalisation and alienation of the individual, and provides for a peaceful legal community which privileges one's neighbour as an individual and therefore strengthens the community as a composite of unique individuals.⁶

The article initially overviews liberalism and positivism, indicating its secular nature and cataloguing its consequently alienating violence in the context of the perennial one and many problem. It then proposes that the solution lies in a return to natural law through faith and the theological, which will reconcile the individual and the community and establish social peace. To this end, the article considers the ways in which classical Christian theologians such as Saint Augustine of Hippo and Saint Thomas Aquinas articulate the fact that faith is inherently reasonable, and illustrates this generally in relation to law through the concepts of natural law outlined by Aquinas. However, a natural law capable of resolving intersubjective alienation must go beyond Aquinas, for on Aquinas' view of God's simplicity and his focus on communal good, this violence of alienation between the individual and the

⁶ See e.g. Gunton (1992), pp 210-222.

community remains. Thus, the article argues that it is at this point where the properly Trinitarian theology of John Milbank is able to redress the limitations of Aquinas and form the basis for a natural law which reconciles the individual and the community in the legal context.

Following Milbank, this article proposes that the key to restoring reason to faith and providing a law which will consequently resolve the problem of totalisation and intersubjective alienation is, against the secular, Incarnational paradox incorporating Christ's life, death and resurrection, which together assume and instantiate the Pauline law of love: that one should love their neighbours as themselves.⁷ For in Christ the incarnate God, there occurs the meeting of infinite and finite, and this is the absolute truth which recovers reason and unites it to faith. In Christ therefore peace is given, since the resurrection and faith in the resurrection can save humanity and produce perfect and infinite peace – truth and law combined, individual and community reconciled. According to this reading of Paul, it is the peaceful uniting of humanity through the resurrection which institutes the law of love, and makes possible codified law grounded in the truth of loving neighbour as self. It follows that law and truth are symbiotic in Christian theology.

These propositions are further contextualised and refined through considering the position of Gillian Rose in terms of the idea of necessary violence in law and the relationship between social norms and social practice. Finally, the article will conclude with some

⁷ Importantly, this does not entail that dialogue regarding the interpretation of Christian jurisprudence and theology is simply restricted to believers. One can of course approach these from a personal perspective of secularism, but it is a distortion to reject or ignore fundamental Christian doctrines whilst simultaneously claiming to elucidate the 'true' teaching of Christianity. In short, one can accurately and consistently explain and analyse Christian theology and its implications without personally believing it, and this is especially the case with a controversial teaching such as the Resurrection.

considerations regarding the content of the Pauline law of loving the neighbour, and how it may counter-intuitively be the catalyst for the regeneration (rebirth?) of law through the *Grundnorm* of Hans Kelsen.

Liberalism, Positivism and the Secular: A Law of Violence

Liberal theories of law assume certainty and stability in legal doctrine and a uniform society on which this doctrine acts. On this view, law is separate from its cultural and political setting because it operates on the ‘basis of abstract rationality and is thus universally applicable’.⁸ The law is above politics and resolves disputes between equal members of society, and accordingly involves the application of logical principles and rational argument, rather than power and coercion. This is an expression of universal rationality which can objectively demonstrate the superiority of certain values through reason, though such contentions and assumptions have been challenged by numerous critical schools.⁹ In this sense, liberalism can also be viewed as the effective secularisation of law, for it rejects faith and the theological in law through abstracting law and legal process from culture and the individual, proclaiming objectivity and placing law within the context of a universal rationality and reason – or what may be termed a ‘secular’ reason, without faith.

In terms of the rule of law, many commentators tend to assume the formal aspects of the rule of law (such as equality before the law and the autonomy of law) will necessarily result in ‘just’ outcomes, whether formal or substantive. However, what has instead been

⁸ Simpson and Charlesworth (1995), p 86.

⁹ Simpson and Charlesworth (1995), pp 86-87.

found is that the proclamation of the rule of law tends to produce violence as a result of norm creation, for the simple reason that law is not in fact independent of culture.¹⁰ Thus, abstractly and universally imposing a rigid ‘rule of law’ on diverse societies (not to mention the diversities existing within diverse societies) presents serious problems. The rule of law, despite (or perhaps because of) its claims to independence and objectivity, may then ideologically become an institutional construct which can be used for violent purposes. In particular, it can be seen as a mechanism for constructing and legitimising plunder through allowing stronger actors to victimise weaker ones under the façade of ‘equality’, and also as a tool for violating the spirit of particular legal obligations. In this sense, the rule of law can be used to embrace brute violence.¹¹ Hence, it could be seen that the privileging of the rule of law as culturally independent excludes faith and subjectivity, and instead alienates different actors in different cultural contexts (by ideologically constructing disparate power relations as mentioned above), providing mechanisms for domination and the violation of law’s spirit. Fundamentally then, liberal theories of law and their associated secularisation can be seen as producing violence.

This turn to violence (and its associated secularisation of law) is exemplified in the legal theory of positivism. In particular, the theological basis for law was rejected by the foundational positivism of John Austin, who explicitly excludes God from law in that according to him, the laws of God are not within the ‘province of jurisprudence’.¹² For Austin, the province of jurisprudence (i.e. the definition of law) is positive law or law that is posited by political superiors to political inferiors (law by position). In other words, it is a rule laid down by an intelligent being by an intelligent being having power over him. The

¹⁰ Brooks (2003), pp 2283-2286.

¹¹ Mattei and Nader (2008), pp ix-5.

¹² Austin (1998), pp 8-9.

political superior with power is termed the sovereign.¹³ Every law, properly so-called, is a species of command. Command is distinguished from wish or desire by the fact that the party issuing the command has the power to inflict evil or pain in the event that the command is not obeyed. This evil incurred through disobedience is called sanction, or enforcement of obedience.¹⁴ Therefore, law according to Austin may be defined as a command from a sovereign enforced by sanction.

The language utilised by Austin in the context of rejecting theology invokes violence. The very term ‘positivism’ itself connotes the violent positing of law, a use of force to establish and preserve the law, as well as to compel obedience to it. Indeed, integral to Austin’s very definition of law is this notion of sanction for disobedience, namely that obedience by the legal subject is (en)forced (coerced?) through inflicted evil and pain. Thus, Austin’s definition of law entails an essential ontology of violence. In his critique of Austin, HLA Hart (a positivist himself) agrees, arguing that Austin’s law of the sovereign giving coercive orders (commands enforced by sanction) is nothing more than the law of the gunman: ‘A orders B to hand over his money and threatens to shoot him if he does not comply’.¹⁵ Not only does this strengthen the contention that Austinian positivism is intrinsically violent, but for Hart it also demonstrates the failure of Austin to give a proper account of the nature of the legal system as a series of rules producing obligations.¹⁶ In particular, Hart states that two types of legal rules exist. The first or primary rules are those rules under which people are required to do or abstain from certain actions. The secondary rules introduce, extinguish and modify primary rules, and determine the nature of their

¹³ Austin (1998), pp 8-9.

¹⁴ Austin (1998), pp 11-12.

¹⁵ Hart (1994), p 82.

¹⁶ Hart (1994), pp 79-80.

operation. The most important of these is the secondary rule of recognition, which identifies and gives validity to the primary rules of obligation.¹⁷ This obligation stems from what Hart terms the internal aspect of rules, where the citizen as part of the society (internal to it) is under some duty or obligation to obey the rule through something like habit or social pressure to conform, as opposed to the external point of view which merely views rules as predictors of human behaviour, with the external observer experiencing none of the obligation to comply.¹⁸

However, William MacNeil argues that Hart never really resolves the latent violence in the command theory of Austinian positivism – instead of replacing this violence with rules, Hart displaces the violence to the rule system itself, especially to the rule of recognition.¹⁹ MacNeil also notes Hart's apparent indifference to the violence of law, symptomatic of his anxiety (as a positivist) to avoid invoking moral concepts of good.²⁰ Even Hart's rule of recognition imbibes violence due to its circular nature (the officials recognise the rule that recognises them as officials), for it proclaims certainty when there is only ambiguity, and papers over what Jacques Derrida terms the 'mystical foundation of law' – that on this view, there is no foundation – only coercion.²¹ Indeed, Hart ultimately appeals to law being recognised as that which parliament enacts, which indicates no fundamental difference with Austin's theory.²² Although, this is not quite so – MacNeil identifies that there is one devastating difference. Due to the internal aspect of Hart's rule system, the Austinian violence displaced there is no longer external, but internal. In other words, the gunman is now inside your head, so to speak. Thus, MacNeil appeals for the return of Austinian

¹⁷ Hart (1994), pp 80-81, 100.

¹⁸ Hart (1994), pp 86-89.

¹⁹ MacNeil (2007), p 44.

²⁰ MacNeil (2007), pp 49-50.

²¹ Derrida (1989), p 10.

²² MacNeil (2007), pp 53-54.

positivism and the rejection of Hartian positivism, for at least Austin leaves room for inner thought and reflection, while Hart gives us a violence ‘(fascism) of the mind’.²³

However, as we have seen, if we wish to move beyond a law which enforces obedience through the violence of alienation, returning to John Austin is not an option. Indeed, any kind of secular foundation which alienates the individual from the community appears to be problematic. To further illustrate the situation more generally, this issue of violence between individual and community is perennial in philosophy, for resolution of the one and the many is, in one sense, the very beginning of philosophy. Its contribution is most clearly set forth in the famed disagreement between Heraclitus and Parmenides. Heraclitus is the philosopher of plurality and motion – everything is becoming, the many are prior to the one, and there is no stability in nature. By contrast, Parmenides argued that nature is uniform and unchanging, pure being with no becoming – the many do not really exist, but everything is the One.²⁴

Aristotle joined the dialogue on the contrast between these positions, and articulated why this is a question which requires some form of resolution or reconciliation. In Aristotle’s conception, particulars are contrasted with universals, but in a variety of ways. In some contexts it is a distinction between types in a class (particular is a specific type, and universal is a general type), and in others a distinction between types and individuals (particulars are individuals, and universals are types), and Devereux argues that Aristotle ultimately has in mind some combination of these two distinctions when he employs these terms.²⁵ According

²³ MacNeil (2007), pp 58-60.

²⁴ Gunton (1992), pp 17-18.

²⁵ Devereux (1986), pp 485, 491.

to Devereux, Aristotle used a medical analogy to illustrate why the distinction between universal and particular is in fact a ‘problem’: ‘... the general universal statement is inadequate insofar as it is indeterminate with respect to particular situations, while the more specific universal statement, though more determinate, is nevertheless liable to mislead’.²⁶ In other words, the universal fails to take account of the specific situation vis-à-vis its ambiguous universality, while the more specified or particularised universal (or the ‘particular’) cannot be applied universally. Hence, the problem of the one and the many: the universal alienates the particular, and the particular castrates the universal. It is this issue, violently manifested in legal ontology through totalisation and alienation of the individual, which is the subject of this article and for which reconciliation is sought, one which will allow peace to flourish between legal individuals and the legal community.²⁷

A Return to Natural Law: Faith, Trinitarian Love and Social Peace

Mather suggests that natural law theory may be useful to resolve some of the mentioned defects in liberalism, particularly in the sense of avoiding coercion and promoting a pluralistic conception of the good. However, he notes that the problems of interpersonal conflict and deciding which forms of immoral conduct ought to be legally prohibited remain difficult to solve.²⁸ In particular, this article argues that a fully theological natural law may be the path to a legal community based in peace rather than violence, where the individual and the community are reconciled (or there exists a ‘pluralistic concept of the good’) and interpersonal conflict is resolved through the notion of ‘the law of love’ – to love your

²⁶ Devereux (1986), p 496.

²⁷ C.f. the problem Aristotle identifies with law in this context in Devereux (1986), pp 500-502.

²⁸ Mather (2001), pp 374-375. This article will not address the latter problem, but it will attempt to address the former.

neighbour as yourself. Indeed, since God in Christian theology is both one *and* many in the Trinity, so social ontology is not relegated to the necessary violence of one *or* many, but rather as a model of the Trinity society may peacefully exist as both individual and community.²⁹ For as Gunton observes, modern society (including legal society) either focuses on the many, which results in arbitrariness and irrationality, or on the one, which does violence to individuals by denying their differences.³⁰ Hence the modern society, and indeed the modern legal society, requires a foundational system which promotes both one and many, individual and community – and it is proposed that this is uniquely found in the Pauline law of love, which produces peace rather than violence.

This theological notion of peace being the reconciliation of individual and community and violence being the alienation of individual and community has its foundation in Augustine, and has been framed more recently by John Milbank. According to Augustine the heavenly peace is unique in that it

...is so truly peaceful that it should be regarded as the only peace deserving the name, at least in respect of the rational creation; for this peace is the perfectly ordered and completely harmonious fellowship in the enjoyment of God, and each other in God. When we arrive at that state of peace, there will be no longer a life that ends in death, but a life that is life in sure and sober truth.³¹

The key here is ‘perfectly ordered and completely harmonious fellowship’ in the enjoyment of God and each other, which leads not to death or violence, but rather to peace and the good. This problem of whether there can be a harmonious human order is central – whether one can assign to their respective tasks and places many different activities, desires,

²⁹ C.f. Gunton (1992), pp 18-19.

³⁰ Gunton (1992), pp 41-46.

³¹ Augustine (2003), p 878.

and social formations. If this is not possible, then ‘only an “effective” peace is possible, a “secular” peace of temporarily suspended violence or regulated competition’.³² Augustine therefore argued that the Romans had no real virtue because they knew no real peace, either at the level of practice or at the level of mythical or ontological conception. The Roman heroic virtue only came as a result of war, and the ‘peace’ is a peace of suspended warfare caused by war – and thus, was no real peace at all. This has its modern analogue in positivism, which really promotes a ‘peace’ of suspended violence where obedience to law is compelled by either physical or mental force, and tends to inhibit human flourishing by alienating the individual from the community. This is similarly the case in regard to liberal conceptions of autonomy and property rights, where relations between legal persons are just regulated competition. By contrast, Christian peace has ontological priority over conflict, for it is what is most real, most secure and most guarantees human life.³³

Hence, violence at its essence is the denial of Being as infinite plenitude and as harmonious ordering of difference.³⁴ In addition, Christianity construes virtue as that which aims towards and is possible within a fundamental condition of peace, a living together of different people in mutual agreement which is true peace, as opposed to the spurious *pax Romana* (Roman peace) of suspended warfare and secular ‘heroic’ virtues which are the result of warfare.³⁵ Peace itself therefore also is beyond virtue because peace is the final end and condition in which virtue can flourish, the culmination of Being itself – or, as may be recalled, the harmonious ordering of difference.³⁶ Thus, the new Christian imagination of

³² Milbank (1990), p 336.

³³ Milbank (1990), p 367.

³⁴ Milbank (1990), p 440.

³⁵ Milbank (1990), pp 332-333.

³⁶ Milbank (1990), p 367.

peace can be defined as ‘the reconciliation of virtue with difference’.³⁷ In this sense, Christianity can rescue virtue from violent, agonistic difference, for the Christian multiple in the Trinity, the infinite flow of excessive charitable (love) difference, is in a much more genuine sense simultaneously unity, and manifests unity.³⁸

Conversely, liberalism and its proclamation of objective reason and the universal ‘rule of law’ tend to promote legal violence by excluding the individual nature of faith and promoting the secular. However, it is not as if Christian faith is fideistic, where faith exists without reason (for this would tend to promote the individual at the expense of the ‘objective’ community). Rather, just as in Christian theology the individual is reconciled to the particular, so faith is reconciled with reason. Indeed, throughout the history of the Christian faith, its proponents have always seen themselves as simultaneously faithful and reasonable. This is the case across the full array of Christian religious and philosophical traditions, including such luminaries of the church as Saint Augustine, Saint Anselm, Saint Thomas Aquinas, and John Calvin.³⁹ More recently, Alvin Plantinga and John Milbank have provided robust philosophical critiques of the claim that reason is inherently secular and consequently faith is by definition irrational or unreasonable.⁴⁰ Consequently, the following discussion endeavours to suggest how Christian faith and reason are in fact unified, not violently divorced.

³⁷ Milbank (1990), pp 332-333.

³⁸ Milbank (1990), pp 380-381.

³⁹ See below for discussion of Augustine and Aquinas. See also Anselm (1999), p 88; Sokolowski (1982), pp 5-6; Mascall (1963), pp 72-73; Calvin (2008), pp 42, 376-377; Calvin (1999), pp 143-145.

⁴⁰ See below for discussion of Milbank. See also Plantinga (2000), pp 167-180, 244-264.

For example, Saint Augustine incorporated his understanding of the relationship between faith and reason into his concept of truth. As a foundation, Augustine argued that according to the etymological definition of philosophy ('love of wisdom'), since wisdom is identical with God and wisdom personified is God, lovers of God are the true philosophers, and come nearest to the truth. Thus Augustine views truth as something progressively discovered by faith in conjunction with reason.⁴¹ It is by reason that humanity is separated from the brute animals, and is alone among the creation able to appreciate the Creator God. However, the fact that human reason has been corrupted by sin necessitates that reason must be initially purified by faith as humanity proceeds along the journey to truth, ultimately to God himself.⁴² Hence for Augustine, faith is required for the proper operation of reason, since trust in and love for Jesus Christ, the Word and Truth of God, is the foundation for true knowledge. Otherwise, the powers of natural reason are prone to deception and error, rather than truth.⁴³ Similarly, in addition to faith, reason is also necessary for the apprehension of truth.⁴⁴ Rist therefore concludes by stating that:

Since we are rational beings, it would be absurd to suppose that the prerequisite that faith precede reason is irrational – and we have now seen in what way it is eminently rational... it is loving faith which prepares the mind for reason to be able fully to perform its proper and most important functions.⁴⁵

In addition, Cushman argues that according to Augustine's view, faith precedes reason, because unless one *believes* they will not understand, and that this position is rational. Consequently, 'the faithful shall at last see God by the instrument of reason; but reason cannot attain the vision of God unguided by faith.'⁴⁶ Augustine, however, does not advocate

⁴¹ Augustine (2003), p 298.

⁴² Augustine (2003), p 430.

⁴³ Cushman (1950), pp 279, 282-283.

⁴⁴ Rist (2001), p 26, c.f. p 2.

⁴⁵ Rist (2001), p 38.

⁴⁶ Cushman (1950), pp 271, 273.

fideism: his is a faith seeking understanding. Faith is required *a priori* due to the internally contradictory nature of a rationalistic, secular approach: 'it cannot reach God because it does not want to have God. It withholds commitment until it has sight; but it cannot achieve sight until it yields commitment.'⁴⁷ Therefore, the purely secular rational approach underestimates the sinfulness of the human heart and is ultimately against true reason, according to Augustine. Indeed, 'faith and reason are required one of the other. They are co-implicates; and it is error, in Augustine's view, to divorce them. Faith presupposes reason; reason urgently requires the correction of faith.'⁴⁸ Faith in this sense is by its nature reasonable, for it enables the mind to properly exercise its capacity for reason.

Aquinas, following Augustine, defines belief or faith to be thinking with assent. To believe is an act of the intellect, and the formal object of faith is the first truth.⁴⁹ Aquinas notes that the human intellect cannot know the truth of God naturally, but must be illuminated by his grace through the divine spark or light of participation.⁵⁰ So faith is by definition in the intellect, inclines towards the truth, and is the most certain of the intellectual virtues.⁵¹ This implies that this kind of faith is inherently reasonable, and moreover that the proper exercise of reason only occurs when enlightened by such faith.

Indeed, Aquinas' general theory of truth applies both to his understanding of the operation of reason and the operation of faith. John Milbank argues that in Aquinas, reason and faith only represent different degrees of intensity of participation and divine

⁴⁷ Cushman (1950), pp 284-285.

⁴⁸ Cushman (1950), p 294.

⁴⁹ Aquinas (1952) vol 1, pp 391-392.

⁵⁰ Aquinas (1952) vol 1, pp 54-55.

⁵¹ Aquinas (1952) vol 1, pp 406, 409.

illumination.⁵² Furthermore, reason itself requires faith since it presupposes the operation of faith, while faith still demands discursive argumentation and is higher than reason only because it enjoys a deeper participation in the divine reason, which is pure intellect.⁵³ Thus, Aquinas offers no support to those who claim there can be a philosophical approach to God independent of theology, or to those who demand confinement to Scripture without metaphysical reflection. Rather, revelation supplements metaphysical reflection and enables the theoretical ascent to truth. Ultimately, truth is restored only in the Incarnation, the hypostatic union.⁵⁴

John Milbank himself also aims to rescue reason from the domain of the secular, and restore it to its rightful position as fundamentally based in belief, or theology. Indeed, he wishes to defend the idea that such a universal logic is necessarily theistic, endorsing belief in a transcendent deity.⁵⁵ Milbank cites both Augustine and Aquinas as examples of theologians who attempted to find a common logic throughout Christian belief, ensuring that a Christian understanding of reason can be presented in continuity with a rational comprehension of the role of God's revelation.⁵⁶ Indeed, Aquinas understood good reason to be an attentive reception, via the mediation of the senses and discursive operations, of the divine light of the logos, in fundamental keeping with Augustine. As such, good reason can only be such if it is based in faith.⁵⁷ Therefore, Milbank argues that only theology can give us a true foundation on which knowledge, politics and ethics can stand. Milbank states that his most important task is to transform the Greek philosophical *logos* through encounter with the theological

⁵² Milbank and Pickstock (2001), pp xiii-xiv.

⁵³ Milbank and Pickstock (2001), pp xiii-xiv.

⁵⁴ Milbank and Pickstock (2001), pp xiii-xiv.

⁵⁵ Milbank (2009a), p 111.

⁵⁶ Milbank (2009a), p 177.

⁵⁷ Milbank (2009b), pp 323-324.

logos, so that thought or reason itself becomes inescapably Christian, and, as such, ‘beyond secular reason’.⁵⁸ Reason may consequently subscribe to belief in a transcendent source.⁵⁹

Milbank thus argues that if Christianity is persuasive then this persuasion should be inherent to the Christian *logos* itself, not to the mediation of secular reason. Any positioning of theology by secular reason either idolatrously confines knowledge of God to immanent disciplines such as cosmology or psychology, or causes appreciation of the divine in terms ‘beyond reason’, thus serving to confirm the myth of an autonomous secular realm of reason.⁶⁰ Theology fully arrives in the incarnational event, the coming of Jesus Christ as the God-man, which is reconciled not through the foundation of secular reason, but through the unity of the Trinitarian relations. For Milbank, God’s Incarnation saves us by opening up a way beyond the material realm into the beyond of the infinite life of God.⁶¹ Following from this, genuine transcendence is sustained only through incarnational paradox.⁶² Milbank rejects the modernist secular reason governing current discourse regarding the relationship of reason and faith (and indeed, law), returning reason to its inherent and proper basis in the theology of Incarnational paradox and theology to its inherent reason. That is, Christian faith is inherently reasonable and reason and faith are compatible, for the very concept and capacity for reason lies in accepting the Christian doctrines by faith.

Finally, arriving back where we started in terms of articulating a natural law which would reconcile the particular and the universal, this connection between faith, reason and

⁵⁸ Milbank (1990), p 147.

⁵⁹ Milbank (1990), p 181.

⁶⁰ Milbank (1990), p 1.

⁶¹ Davis (2009), pp 16-18.

⁶² Milbank (2009a), p 117.

truth can be illustrated through Aquinas' concept of natural law. Aquinas defines law as an ordinance of reason for the common good, made and promulgated by the one who has care of the community. Hence there is an eternal law or *lex eterna*, which is God's law and which fulfils these criteria.⁶³ Since the eternal law of God is a subset of the content of the divine intellect and is therefore unchangeable truth, and to some extent people know God and know truth, to this extent they know the eternal law.⁶⁴ The divine law or *lex divina* allows man to participate more perfectly in the eternal law, and consists of the true revelation contained in Holy Scripture, the Old and New Testaments of the Bible.⁶⁵ Those who do not have this law of revelation nevertheless do by nature those things which are of the law, and so know what is good and what is evil by conscience. This is the natural law or *lex natura*, which humans apprehend through their possessing a share of the eternal reason, and so they are able to participate in the eternal law through reason. Hence, the natural law is the rational creature's participation in the eternal law. Through human reason, the precepts of the natural law proceed to more particular determinations, which are called human or positive law.⁶⁶ All human law or *lex humana*, as it accords with right reason, ultimately derives from the eternal law. If a law deviates from right reason (implying it does not accord with the eternal law of God or immutable truth), it is necessarily unjust, and therefore lacks the necessary quality of law.⁶⁷ Thus, Aquinas' articulation of the natural law illustrates his previous description of the relationship between reason and faith – namely, that divinely illuminated human reason participates in the eternal law of God by faith, and if human law does not accord with this eternal law, it is necessarily against reason.

⁶³ Aquinas (1952) vol 2, pp 208-210.

⁶⁴ Aquinas (1952) vol 2, pp 216-218.

⁶⁵ Aquinas (1952) vol 2, pp 210-212, 214.

⁶⁶ Aquinas (1952) vol 2, pp 208-210.

⁶⁷ Aquinas (1952) vol 2, pp 216-218.

However, for this article's broader purpose of reconciling the individual and the community through a theological natural law, it is not quite enough to simply return to Aquinas. For Aquinas' own ontology of God as well as his view of the natural law have some relevant shortcomings on this issue. According to Aquinas, God is absolutely simple. This means he is the same as his essence or nature, and that his essence is his being. In other words, God is not composed of diverse elements, but is one singular element: Absolute Unity.⁶⁸ Hughes, in noting that God on Aquinas' view is the simplest being, identical to all his parts, attributes, essence and existence, also notes the notion of God as Trinity where God is three persons and one nature, and one of these persons has a divine as well as human nature. Thus, there is an incompatibility (or at least a conceptual difficulty) between Aquinas' full doctrine of simplicity and the doctrines of the Trinity and Incarnation.⁶⁹ The fact that a reconciliation of the one and the many is based on a properly Trinitarian model of God (rather than a unitary model of God) therefore implies that Aquinas' model may be insufficient for the task.

Moreover, in terms of law specifically, Aquinas argues that the law is always directed to the common good. Indeed, for Aquinas the focus and purpose of the law is achieving communal or universal happiness, and any law directed at the individual is not a law apart from when it regards the common good. For Aquinas, what is important is not the part but the whole, for the 'part is ordered to the whole as the imperfect to the perfect'.⁷⁰ Indeed, the ethical and legal realm is the divinely anchored foundation of politics, and so legal justice as virtue must aim at nothing less than the common good. In this sense, his theory is

⁶⁸ Aquinas (1952) vol 1, pp 16-17.

⁶⁹ Hughes (1989), p ix.

⁷⁰ Aquinas (1952) vol 2, p 206.

generalised, and is aimed toward the universal rather than the particular.⁷¹ Dupre notes that there has been dispute between Thomists as to the extent that individual goods are incorporated into the common good, with many arguing that the notion of the common good alienates the individual. Others have argued that for Aquinas, the common good as participation in the divine by faith in God is the ultimate good, and by its very nature individual.⁷² Indeed, with the rise of the social contractarians and the genesis of liberalism, society came to be viewed under individualist premises as a conglomerate of individuals, and this in turn resulted in the demise of the common good.⁷³

What this indicates is that Aquinas' theology and natural law cannot be our solution for at least two reasons. The first operates at the level of theological ontology; as we saw, Aquinas' God is absolutely simple and consequently cannot provide a model for reconciling the individual and the community. The second operates at the level of social ontology, and manifests itself in relation to Aquinas' notion of law being directed towards the common good. Some have understood this to mean that Aquinas privileges the community over the individual, as when for example a person is asked to obey an unjust law for the good of the community, forfeiting their difference as an individual. Others have understood this to mean the good of participation in the divine, which is inherently individual and excludes the community. There is no need to attempt a resolution of the point here, for it follows that regardless of which interpretation holds, there is in any case an alienation of the individual from the community, where one is privileged over the other and at the expense of the other. Thus, to articulate a theological natural law which promotes the peace of reconciling the one and the many, we must go beyond Aquinas to the fully Trinitarian theology of John Milbank,

⁷¹ Keys (2006), pp 186-188.

⁷² Dupre (1993), p 690.

⁷³ Dupre (1993), pp 696-697.

alluded to earlier in this article. Indeed, it is the law to love your neighbour as yourself, as modelled in the Trinitarian relations, which will ultimately prove to be the appropriate foundation for a legal community of peace – for in loving neighbour (community) as self (individual), the individual is reconciled to the community.

The Truth of Incarnational Paradox: Uniting (Universal) Reason and (Particular) Faith

However, the nature of this process here requires further development. Milbank prefigures the solution by stating that the only alternative to (secular) pure reason and fideism is the return of a metaphysic which is able to mediate between faith and reason, a 'reasonable faith' or theology.⁷⁴ The key to this metaphysic is Incarnational paradox. The paradox of the Incarnation is, in the final analysis, the paradox of the absolutisation of contingency – for Christ is the interface of absolute and contingent as the God-man. Furthermore, the meeting of the temporal and the eternal in Christ leads to the recovery of reason, for reason is recovered in the betweenness or paradox of (incarnational) being, where finite belonging to the infinite is the order of things, where time meets eternity, absence meets presence, and immanence meets transcendence.⁷⁵ In other words, reason is united to faith at the paradoxical interface of the universal (reason) and the particular (faith), which is the event of Christ. This is why Milbank states that the absolutisation of contingency has a uniquely disclosive relationship to eternal truth, and is absolute truth – it is the paradoxical event of Christ which is truth.⁷⁶

⁷⁴ Milbank (2009b), pp 328, 333.

⁷⁵ Davis (2009), pp 11, 19, 21.

⁷⁶ Milbank (2009a), pp 114-115.

Given truth is the manifestation of divine being, it also communicates peace and the Good. Indeed, love and truth are co-equal in God.⁷⁷ So in Christ, the specifically exceptional in time where the divine being incorporating love and peace is disclosed, there is the establishment of the law of true human life (the law of love) against the old law which is the law of sin. This is paradoxically based upon Christ as the exception to human law, and upon faith in the criminal death of the one who first identified himself as this exception. Thus, only in the necessity of the paradoxical Incarnation and resurrection can truth and justice which undergird law be possible – that is, the law of love, which removes totalisation and intersubjective alienation, and loves the individual as different while also uniting them to the community. Ultimately, Milbank argues, it is because of the Cross, the event of the judgment of God, that no return to the law of death, to the antique compromise of inhibition of violence, remains possible.⁷⁸ Humanity can only be united through the arrival of Christ, the concrete event, beyond all laws – the arrival of fully restored human truth.⁷⁹ Furthermore, with faith in this event necessarily comes charity, the advent of the love of God manifested in the Incarnation, crucifixion and resurrection, which to receive means to pass on as love for the neighbour. Hence, in the final analysis, it is the Pauline law of love, to love your neighbour as yourself, which provides the foundation for a law that unites the individual to the community – a law of peace.

To summarise and recapitulate in more precise terms, what has been so far established is this: Milbank contends that the only alternative to a secular approach which sunders faith and reason is the return of a theology which is able to mediate between faith and reason, and unite them (and the same more broadly in terms of the particular and the universal). This

⁷⁷ Milbank (2013), pp 68-69.

⁷⁸ Milbank (1990), p 442.

⁷⁹ Milbank (1990), p 318.

theology arrives in the form of Incarnational paradox, where reason is recovered through faith in the truth of divine being, and this is revealed in Christ as the interface between the finite and the infinite, eternal God and temporal man. In the disclosure of divine being as love and ontological peace through the incarnation, crucifixion and resurrection of Christ, the law of sin and death is replaced by a new law, the law of love, which can then become the theological truth which grounds law and consequently restores reason to faith, and removes the violence of alienation.⁸⁰

For in Christ peace is proleptically given, because only the perfect saving of one man from the absolute destruction of death through the resurrection of Christ, the refusal of the loss of any difference, can initially spell perfect and infinite peace leading to the institution of love.⁸¹ This is the normative dimension of the law of love: love is paradoxically both a commandment of the law and obedience to that commandment – love of God and of neighbour is commanded as the greatest commandment of the law by Christ, and Christ also says that if you love him you will obey his commandments.⁸² Thus, divine love both presupposes and is the necessary condition for obedience and the law, and is located in incarnational paradox. This paradox of law and love also points the way to how the law of love may prove to be a foundation for modern codified law: it simultaneously fulfils the law by obeying the commandments since love does no wrong to a neighbour, and reflexively transcends the law by producing its own obedience. This descriptive dimension of the law of love will be considered in the final section.

⁸⁰ Milbank (2009b), p 154.

⁸¹ Milbank (1996), p 468; c.f. Acts 2:22-36.

⁸² Matthew 22:34-39; John 14:15.

The Symbiosis of Law and Truth: Resurrection, the Law of Love and the Pauline Community

Hence it seems, at least at the level of preliminary analysis, that there is a type of symbiotic relationship between law and truth. For it is the law of love that presupposes the truth yielded through the Incarnational paradox and the resurrection, and this in turn provides the foundation in truth for the law to be instantiated, and in this way law and truth establish and maintain the other. The resurrection in particular gains significance when considered in relation to how Milbank explains it in the Pauline context. The first relevant theme in this regard is that Paul pursued law beyond law: the law of love, which is the basis for the expression of natural justice in symbolic law.⁸³ Paul therefore linked natural justice with the invocation of a supreme divine king (Christ, the fulfilment of the law) who exceeded the law as embodying a living law, and he did so with particular regard to the resurrection. This leads into the second theme, and returns us to the question of the law of love and its relationship to the resurrection, previously explained as an event yielding truth. Justice lies before the law and is attainable through the truth of the resurrected man, for with death to the old law comes resurrection to a living law, the law of the spirit or the law of love which renews and redistributes the good.⁸⁴ Thus, the determining factor in the symbiosis of law and truth, the reconciliation of reason and faith, and the removal of the violence of alienation of individual from community, is the event of the resurrection itself. Paul's own writings support this:

Now if Christ is proclaimed as raised from the dead, how can some of you say that there is no resurrection of the dead? But if there is no resurrection of the dead, then not even Christ has been raised. And if Christ has not been raised, then our preaching is in vain and your faith is in vain. We are even found to be misrepresenting God, because we testified about God that he raised Christ, whom he did not raise if it is true that the dead are not raised. For if the dead

⁸³ Milbank (2009a), p 170.

⁸⁴ Milbank (2010a), pp 42-43, 56.

are not raised, not even Christ has been raised. And if Christ has not been raised, your faith is futile and you are still in your sins.⁸⁵

Paul makes it abundantly clear that the basis of the law of sin and death (as opposed to the law of love) being defeated is Christ himself actually being raised from the dead (it alone defeats death and brings life), for if Christ was not actually raised, Paul's preaching is in vain and he is a false witness, faith is futile and sin is not dealt with, and most importantly since Christ has in fact been raised, he is the prototype and guarantee for the defeat of death and the general resurrection.⁸⁶ As such, truth as participation in the divine is only revealed through the resurrection, giving the spirit of life rather than death. In addition, hope is only given through Christ in the resurrection, and this itself is the basis for true peace. Most importantly, since loving others requires loving God, and loving God involves trust or faith in God, and faith is futile without the resurrection, it follows that the law of love presupposes the truth revealed through faith in the entirety of the Christ-Event – life, death and resurrection.⁸⁷

What we therefore see is that from the perspective of Christian theology, the resurrection as truth and law is necessary for the proper operation of a reasonable faith and the law of love, and this allows the proposed symbiosis of law and truth to be more precisely articulated. Truth is finally revealed through the paradox of the Incarnation, which is the meeting of the eternal and the temporal in Christ, his crucifixion, and his resurrection. Since reason is recovered in this paradoxical revelation of the divine being as the law of love, in Christ reason and faith unite to yield truth, and provide a foundation for law which reconciles

⁸⁵ 1 Corinthians 15:12-17.

⁸⁶ 1 Corinthians 15:20-22.

⁸⁷ 1 Corinthians 15:17.

the individual and the community. In this disclosure of the divine being in Christ is revealed the love and peace inherent in Trinitarian relations, particularly the law of love which is the basis of the divine relationship. Thus, the law of love in the divine being ultimately yields truth in the incarnational paradox. The uniting and reconciliation of individual and communal humanity in Christ as the truth also leads to the passing of the law of love, which is obtained through the truth of the resurrected man and may now be given legal expression or codification as the civil law. In this way, to reconcile the universal and the particular, civil law requires the law of love which is established by the truth of the Incarnational event. Similarly, the Incarnational event assumes the law of love since love is the ultimate foundation for the revelation and function of the mystery of divine Being and relationship. In other words, law and truth operate symbiotically to establish and maintain the other.

The proposition that truth is the moment of intersection between particular and universal, opened by the operation of the law, raises the question of what this may point towards. With Milbank, it is proposed that truth as incarnational paradox is the interstitial space of sublation, simultaneously separating and connecting the fundamental parallel and so-called 'binaries' of universal and particular, reason and faith, presence and absence, immanence and transcendence, self and other – the space where individual and community are reconciled through the operation of the law of the Trinity, or the law of love: the reconciliation of the one and the many, diversity in unity. This is the crucial jurisprudential insight which the crude and popularised formulations of fideism and secularism miss, that God is both personal and wholly Other, the moment of simultaneous sameness and difference: the moment of truth.

Indeed, it is the resurrection of the personification of truth, Jesus Christ, which allows this insight.⁸⁸ For it is Christ, the transcendent and the immanent, the one in whom divinity and humanity is united forever, who is the only mediator between God and man.⁸⁹ So Christ, as the truth that mediates between universal and particular, also provides a new law. Instead of the law of the letter which kills, it is a law of the Spirit, a law of love which gives life.⁹⁰ In this sense, it is indeed the Trinitarian relationship and Christ as the revelation of that relationship which resolves the problem of the one and the many, or the problem of how to love the individual in the community. True community is to be oneself but more than oneself, to be needed by the community, assimilated in the spirit. This happens through love, not submission to a higher authority – according to Christ we love one another and each member of the community.⁹¹

A Heavenly City

All this ultimately begs the question of how the law of love may become the foundation of a new legal community. At a holistic and visionary level, it is again Augustine who provides the key. He argues that the eternal city, or the Christian community, possesses the heavenly peace by faith, and ‘lives a life of righteousness based on this faith, having the attainment of that peace in view in every good action it performs in relation to God, and in relation to a neighbour, since the life of a city is inevitably a social life’.⁹² In other words, this ideal heavenly peace is attainable on earth and refers to an ordered harmony in the community of

⁸⁸ John 14:6.

⁸⁹ John 8:58; 1Timothy 2:5.

⁹⁰ 2 Corinthians 3:6.

⁹¹ Bloechl (2013).

⁹² Augustine (2003), pp 878-879.

the city, where all citizens contribute and fulfil their role.⁹³ As such, in the community the individual is not alienated and totalised, but loved by the community comprised of individuals as a function of the law of love, and performs their designated role as an act of love towards all other individuals comprising the community.

As Milbank observes, this is because ‘the distinctiveness of Christianity, and its point of difference with antiquity and modernity, is its reconciliation of virtue with difference’.⁹⁴ The ethics of legal modernity are therefore not really ethical, because they are not oriented towards a harmonious, relational community as an end goal. Instead, as we have seen, legal modernity (albeit inadvertently in many cases) celebrates control, force and violence over members.⁹⁵ The division between the whole and the part perpetuates a fundamental discontinuity, where subordination of one by the other can only be by force. In contrast, Christian ontology abolishes this division and duality which supports the notion of an ineradicable ontological violence.⁹⁶ Christianity is therefore something like the peaceful transmission of difference, or differences in a continuous harmony.⁹⁷ The ultimate consummation of this community of differences in perfect peace and love, then, is heaven. This vision of heaven (or for Augustine, the City of God) consequently allows the denial of the necessity of violence, and exposes the manner in which the assumption of an always-prior violence preserves violence. Furthermore, it indicates that there is a way to act in a violent world which assumes the ontological priority of non-violence, and this way is called forgiveness of sins, brought through the Incarnation and loving sacrifice of Christ. Such

⁹³ Augustine (2003), p 876.

⁹⁴ Milbank (1990), p 423.

⁹⁵ Milbank (1990), p 416.

⁹⁶ Milbank (1990), p 416.

⁹⁷ Milbank (1990), p 422.

action alone can preserve a peaceful, loving community – the Christian community, and, by implication, the legal community.⁹⁸

Therefore, the promotion of the liberal legal subject, with their autonomy and reason, has ultimately failed, for this alienates the members of the universal community in favour of privileging the individual, which leads to violence. Indeed, secular reason appropriated this arbitrary element and pervaded law by engendering a newly rationalistic and formalised approach, one which resulted in pure possession and control, and in the regulation and balancing of power. This in turn led to liberal conceptions of property rights, a doctrine of unlimited sovereignty, and relationships between legal bodies (both persons and corporations) being conceived on a contractualist basis.⁹⁹ Such is at fundamental odds with the Christian vision of loving one's neighbour personally rather than as an abstract legal entity. However, the alternative vision of the pure 'common good' alienates the individual in favour of privileging the community, similarly resulting in violence. Consequently, what is seemingly required is not simply the positing of a secularised and impotent 'law of love' in the modern liberal-positivist legal system, nor merely *ad hoc* adjustments according to the law of the letter (i.e. the passing, amending and repealing of legislation or the steady progression of the common law) which are already built on this violent foundation, but a complete restoration, a rebuilding on the new foundation of the theological law to love one's neighbour as yourself to reinvigorate the legal system, a law of the spirit which will reconcile the individual and the community, allowing all persons, particular and universal, to exist in a legal ontology of harmony and peace.

⁹⁸ Milbank (1990), p 416.

⁹⁹ Milbank (1990), p 441.

Repairing the Broken Middle: Rose on Milbank and Legal Violence

However, Milbank's argument here has not gone without criticism, particularly from the late Gillian Rose. Milbank acknowledges both that Rose is fundamental to his work, and that she has also disagreed with it.¹⁰⁰ Rose's desire to 'retrieve and rediscover' a tradition of law that the 'post-structuralist wave' has 'overcome', particularly through her review of Nietzsche, Foucault and Derrida, provides an important foundation for Milbank's theologically parallel work in *Theology and Social Theory*.¹⁰¹ Both Milbank and Rose contend that modernism has gone awry and that post-structuralist nihilism is no solution.¹⁰² Although Rose is initially concerned with law in the context of nihilism and deconstruction, she also importantly identifies that there is a tension that exists in law involving the universal and the particular, namely that 'the other, unknowable, law... is precisely... the law of the person'.¹⁰³ The formal law is necessary to our self-consciousness and utterly intimate, yet we have no acquaintance with it and it is entirely remote. We obey it only because of its 'universal practical validity'.¹⁰⁴ This is particularly manifested through what Rose calls the 'antinomy of law', or the 'inscrutable encounter with form in general'.¹⁰⁵ Rose expands this idea to mean the 'dual implication of law and ethics' in *The Broken Middle*, and states that where *Dialectic of Nihilism* argues that 'post-structuralist nihilism completes itself as law – unreflected but always historically identifiable' – here 'post-modern antinomianism completes itself as political theology, as new ecclesiology, mending the diremption of law and ethics'.¹⁰⁶

¹⁰⁰ Milbank (2006), pp viii, xii.

¹⁰¹ Rose (1984), p 1.

¹⁰² See Rose (1984); Milbank (1990).

¹⁰³ Rose (1984), pp 23-24.

¹⁰⁴ Rose (1984), p 24.

¹⁰⁵ Rose (1984), p 2.

¹⁰⁶ Rose (1992), p xv.

It is at this point where Rose and Milbank part ways: their conception of the necessity of violence in law. Rose argues that the notion of love without violence is a ‘sect mentality’ which becomes ‘the only refuge for humankind’s invincible enslavement to violence’ – it displays a ‘lack of faith in the violence to be found in love, the love to be found in violence – the law to be found in both’.¹⁰⁷ Fundamentally, contrary to Milbank, violence is ‘not being posited as prior to law: it is presupposed as the call of law’.¹⁰⁸ Rose specifically engages Milbank on this point.¹⁰⁹ She argues that Milbank’s conception of a heavenly city of peace ‘effectively destroys the idea of a city: its task of salvation deprives it of site; while its inclusive appeal deprives it of limit or boundary that would mark it off from any other city and their different laws’.¹¹⁰ It is, as Milbank admits, ‘a paradox, a nomad city’.¹¹¹ Milbank would even see these attributes as virtues; the heavenly city has no alienating and dividing (violent) boundaries, and as an eternal community has no specific site – though it can be arguably instantiated on earth so it is situated to some extent. The disputed issue therefore seems to be the ethereality of Milbank’s city, its lack of basis in the reality of socio-legal relations due to its salvific escapism and lack of concrete definition.

In particular, Rose claims that we should not embrace either the Athenian tradition of the Greeks, which takes the existing law as transcendent and beyond critique, or the Jewish tradition which opposes the law of the city to revelation, which then becomes a law which is transcendent and beyond critical evaluation. We should instead take a middle path which engages critically with both extremes, and this path is the true realm of law. For the middle is always broken; legal institutions always do some harm, and we should not attempt to either

¹⁰⁷ Rose (1992), p 147.

¹⁰⁸ Rose (1992), p 151.

¹⁰⁹ See Rose (1992), pp 277-296.

¹¹⁰ Rose (1992), p 281.

¹¹¹ Rose (1992), p 281.

accept it or escape it.¹¹² True faith is to grapple with this difficulty of the broken or violent middle.¹¹³ Rose understands faith in this context as being (existing) in the midst of uncertainties and mysteries without grasping for facts and reason, in conjunction with the enlarging of inhibited practical reason.¹¹⁴ Faith is not about any object in particular (it is not a faith 'in' God as Milbank might have it), but rather an inflection or attitude of being and action in the world.¹¹⁵ So the middle is the realm of the necessarily violent law, and to simply accept it and mask it without critique (as liberalism does) or escape it without a struggling engagement (with Milbank's heavenly city) is to lack faith and actually reinscribe this violence.¹¹⁶

Rose ultimately contends that 'mended middles betray their broken middle', presenting a 'holy middle' which ultimately 'corrupts' because it claims to repair the relation between the universal and particular, 'drawing attention away from the reconfiguration of singular, individual and state'.¹¹⁷ The middle is always 'broken – because these institutions are systemically flawed' – and this implies that 'this holiness will itself be reconfigured by the resource and articulation of modern domination'.¹¹⁸ In other words, Milbank's (false) claim of a perfectly peaceful city with a holy relation between individual and state will be utilised to perpetrate even greater violence.¹¹⁹ 'If the broken middle is abandoned instead of thought systematically, then the resulting evasive theology, insinuated epistemology, sacralised polity, will import the features of the City of Death remorselessly'.¹²⁰ In short, the

¹¹² Lloyd (2007), p 699; c.f. Lloyd (2009) where this is applied to the tensions which exist between the individual and the state.

¹¹³ Lloyd (2007), p 700.

¹¹⁴ Lloyd (2008), p 692.

¹¹⁵ Lloyd (2008), p 697.

¹¹⁶ Lloyd (2007), p 701.

¹¹⁷ Rose (1992), p 285.

¹¹⁸ Rose (1992), pp 284-285.

¹¹⁹ C.f. Rose (1992), p 307.

¹²⁰ Rose (1992), p 293.

telos of their critical projects differ; Milbank concludes with a vision of ontological peace, while Rose calls us to be content with the struggle within the world we have.¹²¹

Importantly, Vincent Lloyd argues that for Rose, law can be identified with social norms, and since violence is always implicated in law, this implies that social norms never completely match with social practice. This is why Rose is so opposed to any theory which may suggest that a (legal) authority is beyond question – it will result in the violence of unwarranted and unjustified penalties.¹²² That is a formidable objection given Milbank's emphasis on the ultimate or heavenly social peace, which presumably is beyond question because for Milbank it represents the culmination of social ontology. However, it is arguably not an insurmountable one in the sense of considering the possibility that social norms could match with social practice. If this occurred, it seems that the broken middle would be repaired, and there would no longer be an inevitable violence of law. This may exist in the idea of the law of love itself. As discussed above, it is a unique norm in the sense that it is a command which may govern human society, but one which can also be seen as a practice – loving one's neighbour as yourself. It therefore appears that in this framework there is scope for social norm(s) and social practice to match, repairing the middle and removing the invincibility of violence. With Rose, we can continue evaluating and interrogating the extent to which these do in fact coalesce, but this does not exclude the possibility of their doing so.

Even Rose seems to acknowledge this to some extent according to Lloyd, since to love is an act of faith, the suspension of usual relational norms; love relationships do not have the usual normative quality, and do not have any mechanisms of protection.¹²³ Rose relays

¹²¹ Lloyd (2007), p 697.

¹²² Lloyd (2008), p 686.

¹²³ Lloyd (2008), pp 701-702.

the story of Abraham's (near) sacrifice of Isaac as acknowledging the love in violence and the violence in love, with the law being in both. She goes on to say that it is this 'free offering', this 'already knowing yet being willing to stake oneself again' that 'prevents one... from acting with arbitrary violence'.¹²⁴ It seems that such an idea culminates in the willing sacrifice of Christ, the ultimate act of faith through suffering of violence which implies that we too can choose in faith not to engage in violence. Like Christ, we may be called upon to suffer violence when norms do not match practice, but because of his resurrection we can – and we can also consequently continue a community of love and peace.¹²⁵ So in one sense Rose's insight is absolutely true; violence is inevitable because Christ always has to suffer. But it is in this very act of violent love, or the paradoxically violent resistance of violence, that the law of love is instituted, and norms can match practice: the possibility for peace remains.

A Vision of True Peace: Law of Love as the *Grundnorm*

These normative and descriptive (practice) elements of the law of love as potentially providing the foundation for a regenerated civil law and the creation of a community of peace can be articulated through the prism of Hans Kelsen's *Grundnorm*, or basic norm. For Kelsen, the idea of the basic norm is a presupposed, fundamental norm that authorises and founds any coherent and valid legal system. It gives meaning to a legal system and bestows the legal power to create such a system.¹²⁶ At one level, some may note the apparent absurdity of using Kelsen, the high positivist, as a model for how a theological truth such as the law of love may found the civil law – particularly bearing in mind the rather severe

¹²⁴ Rose (1992), p 148.

¹²⁵ See Milbank (2003), pp 70, 100, 102-103.

¹²⁶ Green (2003), p 388.

criticisms of positivism contained in this article. However, Kelsen himself notes that the law of love is an example of the basic norm, illustrating that the neighbour principle contains content from which other norms can be logically deduced, resulting in the establishment of an entire system of valid norms.¹²⁷ Given that Kelsen can observe the fact that the law of love is an example of the basic norm, it seems theology also should be able to begin implementing such a process.

The most powerful example of how this may work is found in Romans 13:8-10. In this passage immediately following Paul's injunction to render obedience to the civil authorities, he clarifies this by stating that this should be achieved by loving one another, for love fulfils the law. He proceeds to show that the commandments are all summed up by the law of love: to love your neighbour as yourself. Thus, Paul is arguing that in addition to the reasons given in Romans 13:1-7, the civil authorities should be obeyed as a function of the law of love. Furthermore, the law of love legitimises and validates the commandment system in conjunction with the civil authorities, for Paul uses it to justify his instruction to obey them by stating that this law of love fulfils obedience. It is the law of love that vindicates and gives meaning to the civil authorities and the series of commandments by ultimately transcending and fulfilling them. Paul also demonstrates that the law of love provides the content from which an entire system of valid norms can be logically deduced. In Romans 13:10, he states that love does no wrong to a neighbour. In this way, all the commandments such as not to murder and steal and the like are contained by this principle, since if you love your neighbour according to Paul you will not murder them or steal from them. Therefore, the axiom to love your neighbour as yourself can plausibly provide the content of 'doing no

¹²⁷ Kelsen (1967), pp 195-196.

wrong to a neighbour' from which a series of norms can be promulgated and a harmonious legal community which loves the individual can be created.

This 'new creation' of the law from its very spirit can arguably lead to a peace beyond violence, and a law beyond force, for instead the law of love, of selfless sacrifice and the pursuit of peace, will inhere in the interactions of individual persons, constituting a community of peace modelled on the relations between the members of the Tri-Unity, graciously revealed in Christ. In a specifically judicial context, this implies that it is more important to investigate than to punish, for once the offence is discovered, the aim is always to restore the offender and promote reconciliation and redemption.¹²⁸ Here, the practice of forgiveness nevertheless involves a practice of restitution, because forgiveness is a gratuitous self-offering beyond the demands of the secular law. Christ is the ultimate model for this, since he offered himself for forgiveness of sins when he was under no legal obligation to do so. Hence, wrongs must be put right by rectification and restoration, or if this is not possible, some other means which demonstrates a will to harmony among human beings.¹²⁹ It seems that the argument of the Apostle Paul in Romans 13:8-10 that the law of love fulfils the law since love does no wrong to a neighbour can plausibly be extended to all areas of law, such that a Christian theology of peace can be translated into a legal ontology of peace.

Ultimately, it is this vision which Christianity seeks – not to escape from society as Rose contends, but to redeem it – to bring the heavenly peace of community and love to earth in the context of what may effectively become a post-secular system of civil law. This law of

¹²⁸ Milbank (1990), p 424.

¹²⁹ Milbank (1990), pp 422, 428.

love exists in its perfect display within the relations of the Trinity, and is revealed as truth through Christ, who reconciles the universal and the particular, rescuing reason from its secular, violent form and producing an ontology of vertical and horizontal peace between God and humanity respectively. Persuaded by this vision, humanity participates in the glorious divine, implementing the law of the Spirit to love one's neighbour, rather than the law of the letter, thus creating a harmonious legal community which reflects the heavenly relations. It is hoped this article will indicate that society ought not to yield to an ontology of violence and alienation, but may instead embrace ontological peace, which loves all individuals in the community and allows the reconciliation of virtue and difference based on the Trinity. If pursued, the Christian vision of an ontology of peace undergirding human and divine relations can not only be a heavenly vision, but an earthly fulfilment as well.

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